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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/303,632	05/03/1999	CHERYL B. LEBEAU	D-7102	8616

44885 7590 02/17/2010  
ARTHUR G. YEAGER, Esq.  
1301 Riverplace Boulevard  
Suite 1916  
JACKSONVILLE, FL 32207

EXAMINER
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EVANISKO, LESLIE J

ART UNIT	PAPER NUMBER
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2854

MAIL DATE	DELIVERY MODE
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02/17/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

09/303,632

**Applicant(s)**

LEBEAU ET AL.

**Examiner**

Leslie J. Evanisko

**Art Unit**

2854

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21,25-32,37,38,41 and 42 is/are pending in the application.
- 4a) Of the above claim(s) 27,30,31 and 38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21,25,26,28,29,32,37,41 and 42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### **Continued Examination Under 37 CFR 1.114**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 14, 2009 has been entered.

### **Election/Restrictions**

1. Claims 27, 30, 31, and 38 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on May 24, 2007.

### **Drawings**

2. The replacement sheets of drawings were received on December 20, 2006. These drawings have been approved by the Examiner.

### **Claim Rejections - 35 USC § 102**

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4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 21, 25, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Piazza et al. (US 2,773,285).

With respect to claim 21, Piazza et al. teach a package (i.e., roll in Fig. 2) of individual disposable sterile transparent bags or "covers," 10 each cover consisting of a flat and entirely transparent planar sheet of pliable plastic film of uniform thickness throughout and a predetermined size in length and width. See, Figures 1 and 2 and column 2, lines 12-31 in particular. Additionally, it is noted that Piazza et al. teach the "covers" can be used "for enclosing commodities which are intended to be kept substantially free of bacterial, fungicidal, or other contamination" in column 1, lines 56-67 and column 3, lines 20-27.

Note that although Piazza et al. do not specifically teach the cover is used for covering a keyboard, note that the claim is drawn to the cover structure per se and not the combination of the cover and keyboard. Therefore, the claim language regarding how the cover is used is merely the intended use of the cover and the claim language does not structurally distinguish from the

container of Piazza et al. Thus, Piazza et al. teach a "cover" including all of the structure as recited and is capable of being used to cover a keyboard as recited.

Furthermore, it is noted that the majority of the claim language in claim 21 (such as the language regarding the cover being capable of inhibiting unintentional contact, not impeding the operator's ability to manipulate the keyboard, the cover configured to contact and entirely protect the keyboard surfaces, and the cover maintaining the keyboard sterile and uncontaminated) are merely functional recitations of desired modes of operation. Again, since Piazza et al. teach a "cover" having all of the structural elements as recited, it is capable of providing those functions and meets the claim language as recited.

With respect to claim 25-26, note that Piazza et al. teach a sheet including an upper member and lower member formed as an envelope with only one elongated opening along a top edge portion so as to be capable of contacting and protecting the entire upper surface and lower surface of a keyboard as broadly recited.

### **Claim Rejections - 35 USC § 103**

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter

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sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as obvious over Piazza et al. (US 2,773,285).

With respect to claims 28 and 29, note that Piazza et al. teach the sterile cover is comprised of two identical flat rectangular members, each member having an elongated top edge portion, an elongated bottom edge portion, and two side edge portions, the flat members being fastened together along the two side edge portions (via the longitudinal seals) so as to be closed and along the elongated bottom edge portion (via the transverse seal 11) with an opening formed (via unsealed portion) along the elongated top edge portion

that is capable of permit a keyboard to be inserted therein as recited. See, column 3, lines 13-19 of Piazza et al. in particular. Note that although Piazza et al. does not necessarily show in the Figures that the rectangular members are oriented or arranged such that the opening is formed along an "elongated" top edge (which is longer than the "short" side edges), Piazza et al. teach that the members are heat sealed transversely at spaced intervals and the spacing of the interval may be varied as necessary to provide covers of any desired size or capacity (see, column 3, lines 1-6). Therefore, it would have been obvious to one of ordinary skill in the art to provide the rectangular members of any desired size and to create the transverse heat seals at such intervals so as to create rectangular covers of the desired size and configuration (such as having an elongated top edge portion, an elongated bottom edge portion and two short side edge portions, the bottom edge and side edges being fastened together such that one long opening is formed along the top edge) so as to best fit over the object desired to be protected.

9. Claims 32, 37, 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yanagisawa (US 5,872,527) in view of Piazza et al. (US 2,773,285).

With respect to claim 32, Yanagisawa teaches a keyboard and an individual disposable transparent cover 34, 34' for protecting the sterility of and

preventing contaminations between dental or medical patients, the cover comprising a flat and entirely transparent planar sheet of pliable film of uniform thickness and a predetermined size in length and width for forming an envelope or enclosure (column 11, lines 36-37) for enclosing the entire upper and lower surfaces of the keyboard as recited. See Figures 9-10 and column 11, lines 21-67 in particular. Note that the disposable cover of Yanagisawa is broadly capable of being disposed of after each patient as recited. Additionally, the keyboard of Yanagisawa is rectangular as shown in Figure 6 and therefore, it would appear that the sheet for enclosing the entire keyboard would also be rectangular with long top and bottom edges and short side edges forming an envelope as recited. Although Yanagisawa is silent with respect to the particular details of the enclosure configuration, note Piazza et al. teach an individual transparent sterile "cover" 10 consisting of a flat and entirely transparent planar sheet of pliable plastic film of uniform thickness throughout and having a predetermined size in length and width, the sheet being rectangular and having a long top edge portion, a long bottom edge portion, and two short side edge portions, the sheet being formed as an envelope into which an object may be placed to cover and protect the object from bacterial, fungicidal or other contamination while allowing a user to clearly view the object. Note the previous comments with respect to claims 21, 25 and 26 above. In view of this teaching, it would have been obvious to one of ordinary



skill in the art to provide the "cover" of Piazza et al. as the enclosure for the keyboard of Yanagisawa to provide a simple and easily replaceable sterile cover for better protection of the keyboard.

With respect to claim 37, note Yanagisawa as modified by Piazza et al. teach the keyboard and cover as recited with the possible exception of the envelope having an elongated opening along the long top edge portion with the bottom edge and side edges being closed. However, the exact size and configuration of the enclosure and the particular edge in which the opening is formed for insertion of object such as a keyboard appears to involve simply a matter of design choice. Therefore, it would have been obvious to one of ordinary skill in the art to provide the cover member of Piazza et al. to be sized and configured as an envelope with an elongated opening along any desired edge, such as a top edge portion, while the other edges are closed to provide a flexible transparent cover for use in a sterile environment with an opening for allowing insertion of the keyboard inside the enclosure.

With respect to claims 41 and 42, note Yanagisawa as modified by Piazza et al. teach a keyboard and a disposable transparent sterile cover including sheet members of pliable plastic film of uniform thickness throughout and a predetermined size in length and width. Note the previous comments with respect to claims 32 and 37 in particular.

Again, it is noted that Piazza et al. teach the cover is comprised of two identical flat rectangular members, each member having an elongated top edge portion, an elongated bottom edge portion, and two side edge portions, the flat members being fastened together along the two side edge portions (via the longitudinal seals) so as to be closed and along the elongated bottom edge portion (via the transverse seal 11) with an opening formed (via unsealed portion) along the elongated top edge portion that is capable of permit a keyboard to be inserted therein as recited. See, column 3, lines 13-19 of Piazza et al. in particular. Note that although Piazza et al. does not necessarily show in the Figures that the rectangular members are oriented or arranged such that the opening is formed along an "elongated" top edge (which is longer than the "short" side edges), Piazza et al. teach that the members are heat sealed transversely at spaced intervals and the spacing of the interval may be varied as necessary to provide covers of any desired size or capacity (see, column 3, lines 1-6). Therefore, it would have been obvious to one of ordinary skill in the art to provide the rectangular members of any desired size and to create the transverse heat seals at such intervals so as to create rectangular covers of the desired size and configuration (such as having an elongated top edge portion, an elongated bottom edge portion and two short side edge portions, the bottom edge and side edges being fastened together such that one long

opening is formed along the top edge) so as to best fit over the object desired to be protected, such as the keyboard of Yanagisawa.

### **Response to Arguments**

11. Applicant's arguments with respect to claims 21, 25-26, 28-29, 32, 37, 41 and 42 have been considered but are moot in view of the new ground(s) of rejection.

With respect to applicant's argument regarding the teaching of Yanagisawa, the Examiner points out that these arguments are merely speculation regarding how one of ordinary skill in the art might interpret the meaning of Yanagisawa beyond the general teaching of enclosing the keyboard. The Examiner further points out that she is relying on Yanagisawa primarily for the teaching of this broad concept of enclosing a keyboard with a flexible cover member so as to maintain the sterility of the keyboard. Yanagisawa is silent with respect to any details of how the enclosure would be formed. However, the Examiner then relies on Piazza et al. to show a sterile cover member formed as an enclosure with the particular details of the envelope as recited. In view of this teaching, it is the Examiner's position that it would have been obvious to one of ordinary skill in the art to look to the cover of Piazza et al. as a means for providing the enclosure for the keyboard of